

UNITED STATES INTERNATIONAL TRADE COMMISSION

NITRILE RUBBER FROM KOREA
Investigation No. 731-TA-827 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3210, July 1999)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Korea of acrylonitrile-butadiene rubber (nitrile rubber),² provided for in subheading 4002.59.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

BACKGROUND

On May 27, 1999, a petition was filed with the Commission and the Department of Commerce by Zeon Chemicals, L.P., Louisville, KY, and Uniroyal Chemical Company, Inc., Middlebury, CT, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of nitrile rubber from Korea. Accordingly, effective May 27, 1999, the Commission instituted antidumping investigation No. 731-TA-827 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 4, 1999 (64 FR 30059). The conference was held in Washington, DC, on June 17, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² For purposes of this investigation, Commerce has defined "nitrile rubber" as the synthetic rubber produced by the copolymerization of butadiene and acrylonitrile, not in latex form, and not containing additives, rubber processing chemicals, and/or other materials used for further processing beyond the copolymerization process.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of nitrile rubber from Korea that are allegedly sold in the United States at less than fair value (“LTFV”).

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or the establishment of an industry is materially retarded, by reason of the allegedly LTFV imports.³ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”⁴

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁵ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁶ In turn, the Act defines “domestic like product” as: “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁷

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.^{8 9} No single factor is dispositive, and the Commission

³ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT ___, Slip Op. 96-51 at 4-6 (March 11, 1996).

⁴ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994). We note that information was obtained in these investigations from all of the domestic industry, all subject foreign producers, and virtually all U.S. importers. Confidential Report (“CR”) at I-2, II-1, VII-1, and VII-4, Public Report (“PR”) at I-2, II-1, and VII-1.

⁵ 19 U.S.C. § 1677(4)(A).

⁶ Id.

⁷ 19 U.S.C. § 1677(10).

⁸ See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.¹⁰ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.¹¹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹²

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of this investigation as follows:

{T}he product covered by this investigation is commonly referred to as acrylonitrile butadiene rubber or nitrile rubber (“NBR”). NBR is a synthetic rubber produced by the copolymerization of butadiene and acrylonitrile. NBR is sold in bale, slab, crumb, powder and latex form. NBR in the latex form is excluded from the scope of this investigation. Also excluded from the scope of this investigation is NBR containing additives, NBR containing rubber processing chemicals, and NBR containing other materials used for further processing beyond the copolymerization process. The merchandise subject to this investigation is classified in the Harmonized Tariff Schedules of the United States (“HTSUS”) at subheading 4002.59.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.¹³

⁸ (...continued)

a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁹ Although the Commission must base its domestic like product determination on the record in this investigation and is not bound by prior determinations, we note that the Commission found a single like product, defined as “all nitrile rubber, regardless of acrylonitrile content, excluding nitrile rubber products that contain additives, rubber processing chemicals, or other material that is used for functions beyond the copolymerization of acrylonitrile and butadiene” in Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Final), USITC Pub. 2090 at 6 (June 1988).

¹⁰ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹¹ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹² Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹³ Initiation of Antidumping Duty Investigation: Acrylonitrile Butadiene Rubber from the Republic of Korea, 64 Fed. Reg. 33461 (June 23, 1999).

Nitrile rubber, also called acrylonitrile butadiene rubber or nitrile butadiene rubber, is a synthetic rubber created by the copolymerization of acrylonitrile and butadiene. The reaction creates a milky emulsion known as latex nitrile rubber. Solid nitrile rubber crumb is produced from the latex through a coagulation process. The crumb is put through washing, de-watering, and drying processes and then, most commonly, pressed into 25 kilogram bales.¹⁴

Nitrile rubber is an intermediate product characterized by a high degree of resistance to oils (e.g., petroleum chemicals, gasoline, diesel and other fuels, and fats) and superior heat resistance.¹⁵ Consequently, it is used in products where one or the other, or both, of those characteristics are desirable.¹⁶ To be used in such products, it must be further processed, e.g., heated and mixed with carbon black or other extenders and fillers, oils, other additives and/or other types of rubber.¹⁷ The resultant compounded mixture (termed a “masterbatch”) is pressed or extruded into the desired form and then vulcanized, by heating, to fix the product’s shape, flexibility and elasticity.¹⁸ Such further processing allows nitrile rubber to become useable in producing finished goods.¹⁹

C. Domestic Like Product Issues

Petitioner has proposed a single like product definition mirroring the scope definition. This domestic like product would include all nitrile rubber regardless of its acrylonitrile content, and would exclude nitrile rubber in the latex form and nitrile rubber products that contain additives or compounding ingredients.²⁰ Respondents do not take a position concerning the definition of the domestic like product.²¹

Applying the various like product factors, we find a single domestic like product identical to Commerce’s scope definition.

Physical Characteristics and Uses. All nitrile rubber is a copolymer of the monomers acrylonitrile and butadiene. Further, all nitrile rubber is used for the same general purpose, i.e., to provide resistance to oils (e.g., petroleum chemicals, gasoline, diesel and other fuels, and fats) and temperature extremes.²² It is an intermediate product that is compounded in further manufacture with other substances to produce articles in which oil and heat resistance are desirable, such as automotive parts, gaskets, oil

¹⁴ CR at I-3; Conference Transcript (“Conf. Tr.”) at 10-11. In addition to being produced and packaged in the form of compressed bales of crumb, nitrile rubber can be produced and marketed in a crumb form, or in powder or particulate forms. No party has argued that the definition of the like product should depend in any way upon these forms of the product.

¹⁵ CR at I-3, Conf. Tr. at 8, 13.

¹⁶ CR at I-2, II-2; Conf. Tr. at 12, 31.

¹⁷ CR at I-3.

¹⁸ CR at I-3.

¹⁹ A detailed description of the production process and end uses of nitrile rubber is included in the staff report. CR at I-2 through I-6.

²⁰ E.g., Petitioners’ Postconference Brief at 2-5.

²¹ Tr. at 89-90; i.e., there is no challenge to Petitioners’ proposed exclusion of latex and nitrile rubbers that contain any of the various types of additives. We also note that the Commerce Department’s scope definition above includes nitrile rubber in compressed bale form, as well as slab, crumb or powder forms. No party has argued that any of those forms should be found to be a separate domestic like product under the six-factor test.

²² CR at I-3, Conf. Tr. at 13, 91.

seals and packings, o-rings and grommets, hoses, industrial belting, conveyor belts, wired cable covers, oil field parts, tank linings, print rolls, adhesives and coatings, walk-off mats, flotation equipment, and shoe soles.²³

There are numerous grades of nitrile rubber, generally distinguished on the basis of acrylonitrile content, which can determine the potential range of end uses for which a specific nitrile rubber product is suitable.²⁴ Acrylonitrile content, by weight, can range from 15 to 51 percent, with the most common nitrile rubber grades containing between 28 percent and 40 percent acrylonitrile, and commodity grades containing from 31 to 35 percent acrylonitrile.²⁵

Interchangeability. Nitrile rubber within a certain acrylonitrile-content range is interchangeable, and there is some interchangeability even between grades.²⁶ A grade that provides oil or temperature resistance superior to that required in a particular application might be used in place of a lower performance grade, although that may be impractical from a cost perspective.²⁷ On the other hand, wide variations among the acrylonitrile content of various nitrile rubber grades can effectively limit interchangeability. For instance, an acrylonitrile content suitable for cold temperature performance may be totally unsuitable where high temperature performance is desired.²⁸

Channels of Distribution. Although one producer uses distributors to distribute a small portion of its nitrile rubber, the majority of U.S. market sales of nitrile rubber are made directly to end users or custom mixers, which add compounding ingredients and perform other value-added processing to transform the nitrile rubber into forms for a specific end use.²⁹

Common Manufacturing Facilities, Production Processes and Employees. All nitrile rubber, regardless of acrylonitrile content, is produced on common manufacturing equipment using common production employees, and either a batch or a continuous process.³⁰

Producer and Customer Perceptions. With respect to customer or producer perceptions, while customers purchase nitrile rubber product having the chemical or heat resistance properties needed for

²³ CR at I-2, II-2; Conf. Tr. at 12, 31.

²⁴ E.g., CR at I-6; Conf. Tr. at 7, 15, 17, 64, 92.

²⁵ CR at I-4; Conf. Tr. at 15, 64, 92. Petitioners state that an acrylonitrile content of 28 to 35 percent constitutes a medium grade, which represents 65 percent of total production of subject nitrile rubber. CR at I-4.

²⁶ CR at I-6; Conf. Tr. at 13

²⁷ E.g., Conf. Tr. at 92-93.

²⁸ Conf. Tr. at 13, 91 (resistance to higher temperatures with higher acrylonitrile content; better cold temperature flexibility with acrylonitrile content below 30 percent by weight).

²⁹ CR at I-7, II-1.

³⁰ Conf. Tr. at 9-11 (the continuous process is better suited to long production runs and, therefore, production of the higher sales volume, mid-range acrylonitrile-content grades; the batch process is better suited to shorter runs and production of the more specialized and custom grades). There are indications that nitrile rubber in forms other than compressed bales (i.e., crumb, powder and particulate) may require additional physical processing and different drying processes (CR at I-3; Conf. Tr. at 57-58).

what can be highly customized or specialized applications,³¹ the bulk of nitrile rubber, in the medium acrylonitrile-content grades, is perceived as fungible, and is suited for a number of less-specialized product applications.

Price. Nitrile rubber is priced below other potential substitute synthetic rubber; the cost of other products is generally a multiple of the cost of nitrile rubber.³² The middle range acrylonitrile content products, which are produced in larger quantities, are generally priced below both the lower and higher acrylonitrile content products. The greater the deviation from the middle range, the less likely the production runs or batches will be large and, thus, the more likely costs and prices will be higher. Outside the middle range, the higher acrylonitrile content products tend to be priced higher than the lower acrylonitrile content products.³³ There are, however, no distinct points at which acrylonitrile content or production features have a sudden or dramatic effect on price.

Conclusion. We conclude that the record does not indicate any clear dividing lines between the various grades of nitrile rubber. Nitrile rubber consists of a continuum of products with differing acrylonitrile content. Although products become less interchangeable as the disparity between acrylonitrile content rises, we find there is a significant degree of interchangeability within ranges and across adjacent ranges along the continuum. All nitrile rubber is produced at the same facilities by the same employees using similar processes, and is generally sold through the same channels of distribution. Customers appear to perceive all grades of the product as providing significant heat and oil resistance, at a price significantly below those of alternative synthetic rubbers.

We find, therefore, a single domestic like product consistent with Commerce's scope definition, consisting of all nitrile rubber regardless of acrylonitrile content.³⁴

D. Domestic Industry

The domestic industry is defined as "domestic producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product"³⁵ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³⁶

Based on our finding that the domestic like product consists of all nitrile rubber, we find that the domestic industry consists of the four domestic producers of nitrile rubber: Zeon Chemicals (Zeon),

³¹ CR at I-6.

³² CR at II-3; Conf. Tr. at 16-17.

³³ See, e.g., CR at V-5 - V-8.

³⁴ Our definition of the like product, therefore, excludes nitrile rubber in latex form, and nitrile rubber containing additives, processing chemicals, or other materials used for further processing beyond the copolymerization process.

³⁵ 19 U.S.C. § 1677(4)(A).

³⁶ See, e.g., Certain Carbon Steel Plate from China, Russia, South Africa and Ukraine, Inv. Nos. 731-TA-753-756 (Final), Pub. 3076 at 9 (Dec. 1997).

Uniroyal Chemical Company (Uniroyal), Goodyear Tire & Rubber Co. (Goodyear), and DSM Copolymer, Inc. (DSM).³⁷

III. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.^{38 39} In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁴⁰ The statute defines “material injury” as “harm which is not inconsequential, immaterial or unimportant.”⁴¹ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in

³⁷ CR at I-1, I-2, VI-1. Uniroyal and Zeon are the Petitioners. Uniroyal is to have closed all U.S. nitrile rubber production facilities in the United States by June 1999. E.g., CR at III-9. Zeon has a long term manufacturing arrangement with DSM under which DSM manufactures nitrile rubber at Zeon’s direction and Zeon markets the nitrile rubber production of DSM. E.g., Conf. Tr. at 36.

³⁸ 19 U.S.C. § 1673b(a).

³⁹ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the allegedly LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 96-249, at 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 96-317, at 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249, at 74 (1979). Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 100-71, at 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, see Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), aff’g 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

⁴⁰ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁴¹ 19 U.S.C. § 1677(7)(A).

the United States.⁴² No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴³

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing nitrile rubber is materially injured by reason of subject imports from Korea.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in this investigation. First, because nitrile rubber is a component of compounds (“master batches”) used to produce various rubber products, the demand for nitrile rubber is derived from consumption of finished rubber articles.⁴⁴

Second, the domestic industry producing and offering for sale domestically-produced nitrile rubber has been quite concentrated and has become even more concentrated over the period of investigation. Uniroyal decreased domestic production in the United States over the period and is to have ceased all production of nitrile rubber in the United States as of June 1999. Moreover, DSM no longer markets its own production. Instead, it has an arrangement with Zeon under which Zeon purchases and resells all nitrile rubber DSM produces. Accordingly, all sales of domestic production (to, e.g., distributors, end users and mixers) are currently made by or through Zeon and Goodyear.

Finally, imports from countries not subject to the investigation play an increasingly important role in the U.S. nitrile rubber market. Uniroyal, one of the two Petitioners and one of the four producers comprising the domestic industry, relied increasingly over the period upon imports from Mexico in place of its own domestic production to supply its U.S. customers. Uniroyal’s imports were initially from the production of the Mexican chemical company GIRSA and its subsidiary Industrias Negromex AS de CV under a 1996 manufacturing agreement.⁴⁵ Imports of nitrile rubber from Mexico have grown in each year of the period of investigation and the average unit values of nitrile rubber imports from Mexico have been consistently below those of any other country, including Korea.⁴⁶ As of June 1999, Uniroyal is to have ceased production in the United States entirely and is shifting all production to its operations in Mexico.⁴⁷ In that regard, Uniroyal and GIRSA are opening a new joint venture facility in Mexico with substantial production capacity.⁴⁸

⁴² 19 U.S.C. § 1677(7)(C)(iii).

⁴³ Id.

⁴⁴ CR at I-2 - I-3.

⁴⁵ E.g., Conf. Tr. at 28 (Uniroyal referring to the arrangement as a purchase of the nitrile rubber business of the Mexican company).

⁴⁶ Document INV-W-152, July 7, 1999. Imports of nitrile rubber from Mexico grew from 690,000 pounds in 1996 to 7,039,000 pounds in 1997 to 17,183,000 pounds in 1998. Id. at Table 1. In the first quarter of 1999, imports from Mexico totaled 8,942,000 pounds, compared with 3,662,000 pounds in the first quarter of 1998. Id. The average unit value of the Mexican product was \$0.65 in 1996, \$0.50 in 1997, \$0.49 in 1998, and \$0.46 in the first quarter of 1999. Id. Imports of nitrile rubber from Mexico grew, on a quantity basis, from 0.5 percent of U.S. apparent consumption in 1996 to 4.8 percent in 1997, 11.2 percent in 1998, and 21.1 percent in the first quarter of 1999. Id. at Table 2. The record indicates that *** during the period of investigation.

⁴⁷ E.g., Conf. Tr. at 20.

⁴⁸ E.g., Conf. Tr. at 20; “Uniroyal Chemical to Build Plant in Mexico,” *Chemical Business Newbase: Plastics News* (Dec. 14, 1998).

Imports from Taiwan represent a part of the nitrile rubber sold by the other Petitioner, Zeon, to its customers in the United States. There was significant growth in imports from Taiwan during the investigation period, with import quantities far exceeding subject imports from Korea.⁴⁹

Nonsubject imports, such as those from Mexico and Taiwan, have been identified by both importers and domestic producers as interchangeable with the domestic product within similar grade ranges.⁵⁰

B. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁵¹

The volume of subject imports from Korea increased from 616,000 pounds in 1996, to 1,481,000 pounds in 1997 and to 3,168,000 pounds in 1998.⁵² In the first quarter of 1999, imports from Korea totaled 1,624,000 pounds compared with 265,000 pounds in the first quarter of 1998. Likewise, the value of imports from Korea grew from \$433,000 in 1996 to \$928,000 in 1997, and \$1,811,000 in 1998. In the first quarter of 1999, imports of nitrile rubber from Korea totaled \$924,000, compared with \$154,000 in the first quarter of 1998.⁵³

Subject imports from Korea represented, however, only 0.5 percent of apparent consumption in 1996, 1.0 percent in 1997, and 2.1 percent in 1998.⁵⁴ At their peak level, in the first quarter of 1999, the subject imports represented only 3.8 percent of apparent consumption. At the same time, nonsubject imports represented 42.1 percent, 49.7 percent and 54.9 percent of apparent U.S. consumption in 1996, 1997 and 1998, respectively, and grew in the first quarter of 1999 to represent 60.3 percent of apparent U.S. consumption.⁵⁵

⁴⁹ Document INV-W-152, July 7, 1999. Imports of nitrile rubber from Taiwan grew from 6,217,000 pounds in 1996 to 10,079,000 pounds in 1997 and 9,061,000 pounds in 1998. *Id.* at Table 1. The average unit import value of the Taiwanese product was \$0.73 in 1996 and 1997, \$0.66 in 1998, and \$0.63 in the first quarter of 1999. Imports of nitrile rubber from Taiwan grew on a quantity basis, from 4.7 percent of U.S. apparent consumption in 1996 to 6.8 percent in 1997, 5.9 percent in 1998, then decreased to 4.0 percent in the first quarter of 1999. *Id.* at Table 2.

⁵⁰ CR at II-5; Conf. Tr. at 20.

⁵¹ 19 U.S.C. § 1677(7)(C)(i).

⁵² CR at Table IV-2. Data on the subject imports is based on Department of Commerce, Bureau of the Census trade statistics. We consider these official statistics to be more reliable than the divergent data, showing considerably higher volumes, supplied in foreign producers’ and, to a lesser extent, in importers’ responses to questionnaires in this investigation. Although these official statistics may themselves somewhat overstate imports of the subject merchandise by including nitrile rubber with additives, they represent the narrowest statistical category available and indications are that any overstatement is relatively minor. *E.g.*, foreign producers’ fax of July 8, 1999. As discussed, *infra*, for data comparability reasons, we have considered the foreign producers’ reported data for portions of our analysis of threat of material injury.

⁵³ CR at Table IV-2.

⁵⁴ CR at Table IV-3.

⁵⁵ *Id.*

In light of the small volume and market share of the subject imports, we find that the volume of imports of the subject merchandise from Korea is not significant.^{56 57}

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports,

the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁵⁸

The record indicates that price is a significant factor in purchasing decisions for nitrile rubber, although a number of conditions of sale (e.g., discounts, rebates, lead times between order and delivery, and payment terms) are also important.⁵⁹ Subject imports and the domestic like product are used interchangeably.⁶⁰ Although there was underselling⁶¹ and some confirmation of sales lost to the subject imports due to their lower prices,⁶² there is no evidence that the subject imports depressed prices or prevented price increases that otherwise would have occurred to any significant extent.

The Commission collected quarterly pricing data for three product categories of nitrile rubber. Weighted-average prices reported by U.S. producers of nitrile rubber showed relative price stability over the period of investigation.⁶³ The average unit value data is consistent with the price data. The unit value of domestic producers' shipments remained in the range of \$0.92 to \$0.94 per pound over the period. More

⁵⁶ Chairman Bragg determines that subject import volume, and the increase in that volume over the period of investigation, are not significant in conjunction with her determination that subject imports have not caused significant price suppression or depression in the U.S. nitrile rubber markets.

⁵⁷ Commissioner Crawford joins only in the factual, numerical discussion of the volume of imports here. She does not rely on any analysis of trends in the market share of subject imports or other factors in her determination of material injury by reason of the subject imports. She makes her finding of the significance of volume in the context of the price effects and impact of the subject imports. For the reasons discussed below, she finds that the volume of the subject imports is not significant in light of its price effects and impact.

⁵⁸ 19 U.S.C. § 1677(7)(C)(ii).

⁵⁹ See CR at II-4. The report notes that the "quality" of the nitrile rubber is also an important factor and that the term "quality," in that regard, refers to the oil and heat resistance level of the rubber. As already noted, however, heat and oil resistance is determined by the rubber's acrylonitrile content, a characteristic that determines the "grade" of the product. Therefore, "grade" would appear to be a more accurate term to describe oil and heat resistance than "quality." Thus, we do not view quality, in the usual sense in which that term is used, to be a factor affecting substitutability. With respect to the grades of the nitrile rubber, the report notes that, within grades, the subject and nonsubject imports are interchangeable with each other and with the domestic nitrile rubber. *Id.* at II-4 - II-5.

⁶⁰ CR at II-4.

⁶¹ CR at V-5 - V-10.

⁶² CR at V-11 - V-15.

⁶³ CR at V-5.

specifically, the average unit values were \$0.93 in 1996, \$0.94 in 1997, and \$0.92 in 1998.⁶⁴ While prices remained relatively stable over the period, cost of goods sold declined. Unit costs of goods sold was \$0.58 in 1996, \$0.61 in 1997, and \$0.52 in 1998, a decline of 10% from 1996 to 1998.⁶⁵ The decline in the cost of goods sold is attributable, at least in part, to a significant decline in the cost of the nitrile rubber material inputs over the period. In this regard, the record shows that nitrile rubber prices are directly affected by the prices of the primary inputs in the production of nitrile rubber, acrylonitrile and butadiene, because contract prices are directly linked to those products' prices.⁶⁶ Acrylonitrile prices dropped from \$0.35 per pound in the first quarter of 1996 to \$0.19 per pound in the first quarter of 1999. Butadiene prices fell from about \$0.18 per pound to \$0.12 per pound over the same period.⁶⁷ Thus, any suppression or depression of domestic producer prices would reflect to a significant degree the impact of competition following the declines in the costs of the two main production inputs.

Additionally, there was a significant downward trend in the average unit value of all nitrile rubber imports, subject and nonsubject, from \$0.83 in 1996 to \$0.69 in the first quarter of 1999.⁶⁸ There were no significant downward effects on U.S. producers' prices, however. Although, as discussed above, the volume of imports from Korea was not significant, total imports represented 42.6 percent, 50.7 percent and 56.9

⁶⁴ CR at Table C-1. The average unit value of shipments in the first quarter of 1999 was \$0.91, but prior year data does not suggest that this indicates a downward trend. The first quarter 1998 unit value of domestic producer shipments was \$0.90, compared with \$0.92 for full year 1998. (The General Information, Instructions, and Definitions for Commission Questionnaires defines shipment values as net values (*i.e.*, gross purchase values less all discounts, allowances, rebates, prepaid freight and the value of returned goods), f.o.b. U.S. producing establishment.)

The unit value of net sales similarly was between \$0.88 and \$0.89 in each year of the period, including the first quarter of 1999. CR at Table C-1.

⁶⁵ CR at Table C-1.

⁶⁶ Even when domestic sales are made under long term contracts, price is not usually specified in the contract; rather, "prices are set generally by informal agreement, *subject to changes in material costs.*" Petition at 26 (emphasis added). Spot market and price list sales would all permit responses to changes in raw material costs. Two of the four domestic producers base a majority of their sales on informal contracts, which typically last between six months and one year. In the informal agreements, which generally include a meet or release provision, the price and quantity generally are not fixed, even when identified. The other two producers report that a majority of their sales are made on a spot basis. CR at V-4. Two of the producers and one importer also reported using price lists. CR at V-3. One domestic producer starts negotiations with a price list, and about half of its sales come from the price list. One importer also uses a price list for warehouse shipments, but 60 percent of its sales are made under contracts, typically on a quarterly basis but renegotiated as necessary, and 40 percent of its sales are made on a spot basis. CR at V-3 - V-4. Thus, with some amount of lag time, fluctuations in material costs may be reflected in the sales price under each of these arrangements.

The impact of raw materials prices upon producers' costs, and the prices that they may be able to charge for their nitrile rubber production is highlighted by the fact that, at least at certain times during the period of investigation, material inputs accounted for, on average, between 45 percent and 50 percent of cost of goods sold (and as much as 70 percent of cost of goods sold for one domestic producer in the period). CR at V-1.

⁶⁷ CR at V-1 - V-2 (data extracted from *Chemical Week*, Jan. 1996-Mar. 1999). These are spot prices, but contract prices have followed similar trends.

⁶⁸ CR at Table IV-2; Document INV-W-152 at Table 2.

percent of apparent U.S. consumption in 1996, 1997 and 1998, respectively, and grew in the first quarter of 1999 to 64.2 percent of apparent U.S. consumption.⁶⁹

Moreover, while the subject imports grew from a 0.5 percent share of apparent consumption in 1996 to a first quarter of 1999 share of 3.8 percent, nonsubject imports from Mexico grew from the same starting point, *i.e.*, a 0.5 percent share of apparent consumption in 1996, to a 21.1 percent share in the first quarter of 1999,⁷⁰ representing an increase in Mexican penetration that was 5.6 times that of the subject imports. Also significant in this regard, over the period, the average unit value of the Mexican product was significantly below that of the imports from Korea.^{71 72 73}

In sum, we find that the subject merchandise and the domestic like product are generally interchangeable and that there was some underselling of the domestic product by the subject imports. We find, however, that the volume of the subject imports is not significant compared with total U.S. apparent consumption and the volume of nonsubject imports, which also undersold the domestic product. Declines in the prices of domestic nitrile rubber would have been consistent with declines in the costs of the key raw material inputs over the period of investigation. Moreover, despite all of these downward price pressures in the U.S. market, the average unit value of domestic producers' shipments remained fairly constant throughout the period of investigation.

For these reasons, we find that the subject imports did not adversely affect prices for the domestic like product to any significant degree.

D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry." These factors include output, sales, inventories, capacity utilization, market share,

⁶⁹ CR at Table IV-3.

⁷⁰ Document INV-W-152 (July 7, 1999) at Table 2. Imports of nitrile rubber from Mexico grew from 690,000 pounds in 1996 to 7,039,000 pounds in 1997 to 17,183,000 pounds in 1998. *Id.* at Table 1. In the first quarter of 1999, imports from Mexico totaled 8,942,000 pounds, compared with 3,662,000 pounds in the first quarter of 1998. *Id.*

⁷¹ Document INV-W-152 at Table 2; *see also* CR at Table IV-2.

⁷² We note the heavy penetration of nonsubject imports at prices, particularly from Mexico, considerably below the prices of the subject imports. Although the prices of imports from Mexico may be akin to transfer prices (Conf. Tr. at 34), we note that an importer of such low-priced merchandise from Mexico (Uniroyal) would enjoy considerable flexibility in setting prices vis-a-vis pricing of subject imports, nonsubject imports, and domestic like product.

⁷³ Commissioner Crawford concurs that the subject imports are not having significant effects on domestic prices. She has given Petitioners the benefit of the doubt and assumed that none of the subject imports would have been sold in the U.S. market at fairly traded prices, and therefore that all of the demand for them would have shifted to other sources. The largest volume of the subject imports was 3.8 percent of the U.S. market in interim 1999, and thus the shift in demand away from the subject imports would have been quite small. Nonsubject imports, including a large volume of competitive Mexican imports, dominated the market with a 60.3 percent market share in interim 1999. Thus, the nonsubject imports would have captured a substantial portion of the small shift in demand away from the subject imports. Therefore, the shift in demand towards the domestic product would have been even smaller. This increase in demand for the domestic product would have been too small to have enabled the domestic industry to increase its prices, had the subject imports been fairly traded. Consequently, Commissioner Crawford concludes that the subject imports are not having significant effects on domestic prices.

employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁴ ⁷⁵

Consistent with our findings that the volume of the subject imports was not significant, and that the subject imports did not have significant effects on prices for domestically produced nitrile rubber, we find that the subject imports are not having a significant impact on the domestic industry.

Although the domestic industry experienced decreased shipment levels,⁷⁷ declining market share,⁷⁸ production,⁷⁹ and employment levels⁸⁰ over the period of investigation, those declines are consistent both with Uniroyal’s gradual reduction and cessation of production in the United States and commensurate reliance upon nonsubject imports from Mexico, and with Zeon’s increased imports from Taiwan.⁸¹ Indeed,

⁷⁴ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25, n.148 (Feb. 1999).

⁷⁵ As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider “the magnitude of the margin of dumping” in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce identified estimated dumping margins for Korea ranging from 83.81 percent to 102.20 percent. 64 Fed. Reg. at 33462.

⁷⁶ Chairman Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁷⁷ U.S. producers’ domestic shipments, on a quantity basis, declined from 75.4 million pounds in 1996 to 73 million pounds in 1997, to 65.9 million pounds in 1998. The first quarter of 1999 shipments totaled 15.1 million pounds compared with 20.1 million pounds in the first quarter of 1998. CR at Table C-1. On a value basis, U.S. producers’ shipments declined from \$70.3 million in 1996, to \$68.6 million in 1997, to \$60.6 million in 1998. First quarter 1999 shipments totaled \$13.8 million compared with \$18.1 million in the first quarter of 1998.

⁷⁸ U.S. producers’ shipments as a percent of apparent consumption, on a quantity basis, declined from 57.4 percent in 1996, to 49.3 percent in 1997 and to 43.1 percent in 1998. In the first quarter of 1999, it declined further to 35.8 percent. On a value basis, the decline went from 60.2 percent in 1996 to 54.1 percent in 1997 to 48.7 percent in 1998 and to 42.2 percent in first quarter 1999. CR at Table IV-3.

⁷⁹ U.S. producers’ production declined from 99.3 million pounds in 1996 to 89.2 million pounds in 1997 to 88.3 million pounds in 1998 to 16.7 million pounds in the first quarter of 1999 (compared with 23.3 million pounds in the first quarter of 1998).

⁸⁰ The number of production workers declined by two percent, from 272 in 1996 to 266 in 1998. CR at Table C-1.

⁸¹ Uniroyal’s decision to import from and shift production to Mexico, and Zeon’s decision to import from Taiwan, preceded in time and do not appear related in any discernable degree to the subject imports from Korea. See, e.g., Conf. Tr. at 33-35; Petitioners’ Postconference Brief at 26-27; see also “Uniroyal Chemical to Build Plant in Mexico,” *Chemical Business Newbase: Plastics News* (Dec. 14, 1998) (“A joint venture nitrile synthetic rubber facility will be constructed between Tampico and Altamira in Mexico by Uniroyal Chemical Co. Inc. and the Mexican chemical company GIRSA. The state-of-the-art unit will have a workforce of around 50 and a capacity of 40,000 tonnes/y Paracril-brand nitrile rubber and should be phased into operation late in 1999. Uniroyal’s Painsville, OH, unit, which has a workforce of 125 and once turned out 20,000 tonnes/y Paracril, will be closed in the middle of 1999, which will involve an estimated pretax write off of around (USDollar) 30 M for 4Q. In 1996 Uniroyal acquired the NBR operations of GIRSA’s subsidiary Industrias Negromex SA de CV at Tampico and started manufacturing 6,000 tonnes/y Paracril; output was raised to 12,000 tonnes/y in 1998.” (emphasis added).)

(continued...)

U.S. producers' shipments decreased by 9.5 million pounds from 1996 to 1998,⁸² while nonsubject imports from Taiwan and Mexico (attributable in whole or substantial part to the Petitioners, Zeon and Uniroyal, respectively) increased by nearly the same amount, i.e., 9.4 million pounds, in that period.⁸³ That is, these increased nonsubject imports were not simply a supplement to U.S. producer shipments of domestic product as Petitioners have asserted;⁸⁴ rather, they replaced the decline in U.S. producer shipments. The same general phenomenon, i.e., replacement of U.S. product with nonsubject imported product, is evident in the domestic production and production capacity data.^{85 86}

The domestic industry's financial data do not suggest that subject imports are having a significant adverse impact on the industry. The domestic industry's total operating income declined over the period of investigation, from \$6.7 million in 1996 to \$4.0 million in 1997, then recovered somewhat to \$4.9 million in 1998.⁸⁷ While operating income in the first quarter of 1999 was \$1.6 million, compared with \$1.8 million in the first quarter of 1998, that result was on a much smaller base of net sales. Operating income to net sales, therefore, after declining from 7.8 percent in 1996 to 6.7 percent in 1998, rose to 10.6 percent in the first quarter of 1999, compared with 8.2 percent in the first quarter of 1998.⁸⁸ Similarly, unit operating income, after declining from \$0.07 in 1996 to \$0.04 in 1997, rebounded to \$0.06 in 1998 and to \$0.09 in the first quarter of 1999, compared with \$0.07 in the first quarter of 1998.⁸⁹ At the same time that selling, general and administrative (SG&A) expenses increased absolutely and on a per unit basis, costs of goods sold declined, both on an absolute basis and on a per unit basis.⁹⁰

⁸¹ (...continued)

See also Respondents' Postconference Brief at 9-14 and Exhibits 1-3.

⁸² CR at Table C-1 (shipments of 75.4 million pounds in 1996 and 65.9 million pounds in 1998).

⁸³ Document INV-W-152 at Table 1.

⁸⁴ E.g., Petitioners' Postconference Brief at 10-11.

⁸⁵ Between 1996 and 1998 domestic production capacity declined by 9.3 million pounds (from 130.5 million pounds to 121.2 million pounds) and domestic production decreased by about 10 million pounds (from 99 million pounds to 89 million pounds), while imports from Taiwan and Mexico increased by 9.4 million pounds. U.S. producers' sales declined on a quantity basis from 96 million pounds in 1996 to 83.2 million pounds in 1998. CR at Table C-1.

⁸⁶ Commissioner Crawford concurs that the subject imports are not having a significant impact on the domestic industry. As noted, had the subject imports been fairly traded the increase in demand for the domestic product would have been too small to have enabled the domestic industry to increase its prices. The increase in demand for the domestic product also would have been so small that the domestic industry would not have been able to increase its output or sales, and therefore its revenues, significantly. Therefore, the subject imports are not having a significant impact on the domestic industry. Consequently, Commissioner Crawford concludes that the domestic industry would not have been materially better off if the subject imports had not been dumped.

⁸⁷ CR at Table C-1.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ CR at Table C-1. SG&A increased from \$8.2 million in 1996 to \$8.9 million in 1998, then declined in the first quarter of 1999 to \$2 million compared with \$2.2 million in the first quarter of 1998. SG&A on a per unit basis rose from \$0.09 in 1996 to \$0.11 in 1998 and to \$0.12 in the first quarter of 1999, compared with \$0.11 in the first quarter of 1998. Cost of goods sold decreased with the decreasing production from \$70.3 million in 1996 to \$59 million in 1998 and to \$11.6 million in the first quarter of 1999, compared with \$17.9 million in the first quarter of 1998. Cost of goods sold per unit declined from \$0.73 in 1996 to \$0.71 in 1998 and to \$0.67 in the first

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Thus, the financial data present a mixed picture regarding the health of the domestic industry. However, given our negative findings on volume and price effect, and given the activities of Uniroyal and Zeon, we find no reasonable indication that the subject imports materially contributed to any negative performance by the domestic industry over the period examined.

E. Conclusion

For the reasons stated above, we find that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports from Korea.

IV. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”⁹¹ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”⁹² In making our determination, we have considered all factors that are relevant to this investigation.⁹³

Based on an evaluation of the relevant statutory factors, we find no reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from Korea.

We note at the outset that the U.S. industry has been in a generally healthy condition during the period of investigation, particularly in 1998 and the first quarter of 1999.^{94 95} Moreover, as would be

⁹⁰ (...continued)
quarter of 1999, compared with \$0.70 in the first quarter of 1998.

⁹¹ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

⁹² 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

⁹³ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

⁹⁴ See CR at Table C-1; see also discussion of impact of subject imports in the material injury section of these views, *supra*. The Federal Circuit in Suramerica de Aleaciones Laminadas, C.A. v. United States, 44 F.3d 978 (Fed. Cir. 1994) indicates that the present condition of the industry is among the “relevant economic factors” in a threat determination.

⁹⁵ The Federal Circuit held that 19 U.S.C. § 1677(7)(F)(I) requires the Commission to consider “all relevant factors” that might tend to make the existence of a threat of material injury more probable or less probable, including domestic industry support for the petition and the views of other interested parties such as consumers. Suramerica, 44 F.3d at 984. The court stated that the Commission “may use its sound discretion in determining the weight to afford these and all other factors, but . . . cannot ignore them.” Id. at 984. The Commission cannot limit its analysis to the enumerated statutory criteria when there is other pertinent information in the record. Id.

(continued...)

expected, the U.S. industry's transition over the period to increasing reliance upon nonsubject imports adversely affected its performance indicators.

We also find that the evidence does not indicate the likelihood of substantially increased nitrile rubber imports from Korea.⁹⁶ The record indicates that the producers in Korea have been increasing their production capacity utilization rates. Capacity utilization was *** percent in 1996, *** percent in 1997, *** percent in 1998, and *** percent in the first quarter of 1999, compared with *** percent in the first quarter of 1998.⁹⁷ Nitrile rubber production capacity has *** at *** million pounds from 1996 through the period of investigation.⁹⁸ Korean nitrile rubber exports to the United States as a share of total Korean production has *** in recent years, *** percent in 1997 and *** percent in 1998.⁹⁹ We find, therefore, that Korean producers' capacity and capacity utilization levels do not indicate that the subject imports are likely to increase substantially in the imminent future.

We find that the rate of increase of the volume or market penetration of imports of the subject merchandise does not indicate the likelihood of substantially increased imports.¹⁰⁰ Although there were increases in the volume and market share of the subject imports during the period of investigation, the magnitude of the percentage increase is a function of the small 1996 base level of imports.¹⁰¹ As already indicated, notwithstanding these increases, imports from Korea were not at significant levels in the period of investigation and did not have significant price effects or adversely impact the domestic industry. Moreover, these increases were dwarfed by increases in the volume and market share of nonsubject imports, in particular from Mexico and Taiwan. Accordingly, we find that the recent volume trends exhibited by the subject imports, and projected increases, do not of themselves indicate a likelihood that there will be a significant increase in the subject imports in the near term.

⁹⁵ (...continued)

In the instant investigation, petitioners representing *** of reported 1998 domestic production support the petition. ***. CR at III-1.

⁹⁶ 19 U.S.C. § 1677(7)(F)(I)(II).

⁹⁷ CR at Table VII-1. The Korean producers' capacity utilization is projected to be *** percent in full year 1999 and *** percent in full year 2000.

⁹⁸ CR at Table VII-1. Based on data submitted in response to Commission questionnaires, production capacity in Korea is projected *** in full year 1999 and 2000. Accordingly, exports from Korea to the United States can be estimated to increase by *** percent in 1999, compared with 1998 levels, and by *** percent over 1999 levels in 2000.

⁹⁹ CR at Table VII-1. Exports to the United States as a share of total Korean production of the subject merchandise is estimated to be *** percent in full year 1999 and *** percent in 2000. The level of exports to the United States included in Table VII-1 is derived from the Korean questionnaire responses. The volume and value of exports in the responses are higher than those shown in the official import statistics. For purposes of our analysis of material injury we have relied upon the official statistics only, viewing them in this context as the more reliable source of actual imports. For purposes of the threat analysis, however, which looks toward the imminent future, we rely upon the reported U.S. export information, together with the other information reported and projected by the Respondents to permit comparability of data.

¹⁰⁰ 19 U.S.C. § 1677(7)(I)(III).

¹⁰¹ Imports, based on the official statistics, were 616,000 pounds in 1996, 1.48 million pounds in 1997, and 3.17 million pounds in 1998. CR at Table IV-2.

The inventory levels of the subject merchandise in Korea¹⁰² generally declined between 1996 and 1998.¹⁰³ Moreover, although the level of U.S. importers' inventories fluctuated during the period, they remained relatively stable in 1998 compared with 1996, both considered on an absolute level and as a ratio to total imports.¹⁰⁴ Indeed, the overall inventory level in 1998 was relatively minimal compared to the size of the overall market for nitrile rubber in the United States.¹⁰⁵ Therefore, we do not find that inventory levels of the subject merchandise support a finding of a reasonable indication of threat of material injury.

We find that there is no evidence of "potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products."¹⁰⁶ Although the Korean facilities are "swing" plants, theoretically capable of producing either nitrile rubber or styrene butadiene rubber, there is no record evidence to suggest that the Korean producers will actually shift production away from the other product to nitrile rubber.¹⁰⁷ Accordingly, the record contains no indication that the subject producers will shift production and increase shipments to the United States.

We find that the subject imports are not likely to have a significant depressing or suppressing effect on domestic prices.¹⁰⁸ As we explained in the above discussion of material injury by reason of subject imports, the subject imports have not had significant effects on the price of domestic merchandise. The record does not suggest a change in the imminent future in the manner in which prices are set and price competition occurs in this market. Accordingly, we find it unlikely that the imports will have significant price-depressing or price-suppressing effects on domestic prices in the imminent future or that the subject import prices are likely to increase the demand for further imports.¹⁰⁹

We have also examined the statutory criterion concerning the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.¹¹⁰ The record indicates no significant impact by subject imports on the domestic industry. Accordingly, the subject imports have had, and will continue to have, no significant impact on the industry's ability to finance production and development efforts.¹¹¹

¹⁰² 19 U.S.C. § 1677(7)(F)(I)(V).

¹⁰³ CR at Table VII-2. The Korean producers' inventory levels are projected to remain at stable levels in 1999.

¹⁰⁴ CR at Table VII-2.

¹⁰⁵ CR at Tables IV-3 & VII-2.

¹⁰⁶ 19 U.S.C. § 1677(7)(F)(I)(VI).

¹⁰⁷ CR at I-6, VII-3; see also Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico, Invs. Nos. 731-TA-794-796 (Final), USITC Pub. 3190 (May 1999) (determination of no material injury or threat thereof to U.S. industry producing ESR by reason of subject imports; accordingly, no antidumping duty order is in place against styrene-butadiene rubber from Korea and any incentive for shifting production to nitrile rubber that such an order might have engendered is not present).

¹⁰⁸ 19 U.S.C. § 1677(7)(F)(I)(III).

¹⁰⁹ As noted above, there was significant penetration by nonsubject imports at prices, particularly from Mexico, considerably below the prices of the subject imports. Even if resale prices of nonsubject imports were higher than the prices of the subject imports in the U.S. market, as alleged, e.g., by Uniroyal, the importers of low value nonsubject merchandise have considerable discretion in setting prices.

¹¹⁰ 19 U.S.C. § 1677(7)(F)(I)(VIII).

¹¹¹ See, e.g., CR at Table C-1.

Finally, the record in this investigation does not indicate any other demonstrable adverse trends that indicate a probability that the subject imports will likely materially injure the domestic industry.^{112 113}

In sum, we determine that there is no reasonable indication the domestic industry producing nitrile rubber is threatened with material injury by reason of the subject imports from Korea.

CONCLUSION

For the foregoing reasons, we determine that there is no reasonable indication that the domestic industry producing nitrile rubber is materially injured or threatened with material injury by reason of the subject imports from Korea.

¹¹² 19 U.S.C. § 1677(7)(F)(I)(IX).

¹¹³ The record indicates that India has issued a dumping order against Korean nitrile rubber, effective July 1997. CR at VII-3. No increases in Korean exports to the United States are projected as a result of that action and Petitioners have not argued an expected increase on that basis.